IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2007

CORAM

THE HONOURABLE MR. JUSTICE K.N. BASHA

Crl.O.P.No.1582 of 2006
and Crl.M.P.No.332 of 2006

Devendra Pundir ... Petitioner

Vs

Rajendra Prasad Maurya
Proprietor
Satyamev Exports
S/o.Sri Rama Shankar Maurya
53/52. Mosikiranur Street
Near Royal Stage, Erode-3. ... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records pertaining to the Criminal Proceedings in C.C.No.258 of 2001 on the file of the Judicial Magistrate, No.I, Erode and quash the same in respect of the petitioner.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.M.Ravi

O R D E R

Learned counsel for the petitioner submits that the petitioner has come forward with this petition seeking for the relief of quashing the proceedings initiated against the petitioner along with other accused for the offence under Section 138 of the Negotiable Instruments Act.

2. It is contended by the learned counsel for the petitioner that the petitioner has been arrayed as second accused out of two accused. It is submitted by the learned counsel for the petitioner that the first accused is the sole proprietrix and she only issued the disputed cheques involved in this matter and in view of the position of the first accused being the sole proprietrix, the question of implication of the second accused in respect of the offence committed by the sole proprietrix concern not at all arise. Learned counsel for the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

petitioner further contended that Section 141 of the Negotiable Instruments Act is not attracted. The said provision relates only in respect of a "company" or a "partnership firm" and not in respect of the "proprietary concern" and as such the petitioner being the second accused, he cannot be vicariously held responsible for the offence said to have been committed by the first sole proprietary concern. Learned counsel for the petitioner also placed reliance on the decision of the Honourable Supreme Court reported in RAGHU LAKSHMINARAYANAN VS FINE TUBES (2007) 5 SCC 103 in support of his contention and contended that a "proprietary concern" is not covered under Section 141 Explanation and Section 138 of the Negotiable Instruments Act and as such the vicarious liability of the persons other than the proprietor, does not arise.

3. Per contra, Mr.M.Ravi, learned counsel appearing for the respondent vehemently contended that there is specific allegation against the petitioner herein for the fact that he also actively participated in the proprietary concern. Therefore, it is contended by the learned counsel for the respondent that both the accused are jointly and severally liable to pay the amount towards the amount dishonoured in this matter. It is further submitted by the learned counsel for the respondent that as a matter of fact that the petitioner was doing the entire business in the Binami name, his wife, the first accused in this case. Therefore, it is contended by the learned counsel for the respondent that the petitioner is also liable to face the trial and if at all any point to be argued, the same can be raised at the time of full-fledged trial and hence the above quash petition is liable to be dismissed.

4. I have carefully considered the rival contentions put forward by either side and also perused the impugned complaint filed in this case and other materials available on record.

5. It is seen that the petitioner has been arrayed as A2 out of two accused in this case. The first accused is none else than the wife of the second accused in this case. Even as per the allegation and averment contained in the complaint, the first accused is the sole proprietrix of the concern called "Kamakshi Enterprises" and it is also not disputed and even specifically mentioned in the complaint to the effect that it is only the first accused issued the disputed cheques involved in this matter. In paragraph 5, it is specifically mentioned that the first accused issued three cheques and on the presentation of those three cheques, the cheques were dishonoured and thereafter once again at the request of the above accused, the complainant represented three cheques for payment and they were returned unpaid with an endorsement

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"Payment stopped by the Drawer". Though it is also mentioned that the second accused, being the husband of the first accused, actively participating and managing the business of the said concern along with the first accused, the said allegation itself is not sufficient to implicate the second accused in view of the admitted fact that the first accused is the sole proprietrix of the concern. Therefore, the first accused being the sole proprietrix, the question of implicating any other person much less the second accused herein to be vicariously held liable for the alleged dishonour of cheques not at all arise.

6. Learned counsel for the petitioner also rightly pointed out that Section 141 Explanation of the Negotiable Instruments Act does not cover the proprietary concern. The said provision relates only to a "company" or a "firm" and therefore the vicarious liability of the person other than the proprietor or proprietrix does not arise. The Honourable Supreme Court also categorically held in RAGHU LAKSHMINARAYANAN VS FINE TUBES (2007) 5 Supreme Court Cases 103 as follows:-

> "9.The description of the accused in the complaint petition is absolutely vague. A juristic person can be a company within the meaning of the provisions of the Companies Act, 1956 or a partnership within the meaning of the provisions of the Partnership Act, 1932 or an association of persons which ordinarily would mean a body of persons which is not incorporated under any statute. A proprietary concern, however, stands absolutely on a different footing. A person may carry on business in the name of a business concern, but he being proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is not a company. Company in terms of the Explanation appended to Section 141 of the Negotiable Instruments Act, means any body corporate and includes a firm or other association of individuals. Director has been defined to mean in relation to a fir, a partner in the firm. Thus, whereas in relation to a company, incorporated and registered under the Companies Act, 1956 or any other statute, a person as a Director must come within the purview of the said description, so far as a firm is concerned, the same would carry the same meaning as contained in the Partnership Act.
>
> 10. It is interesting to note that the term "Director" has been defined. It is of some significance to note that in view of the said description of "Director", other than a person who comes within the purview thereof, nobody else can be

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

prosecuted by way of his vicarious liability in such a capacity. If the offence has not been committed by a company, the question of there being a Director or his being vicariously liable, therefore, would not arise.

11. The appellant herein categorically contended that Accused 1 was a proprietary concern of Accused 2 and he was merely an employee thereof.

12. If Accused 1 was not a company within the meaning of Section 141 of the Negotiable Instruments Act, the question of an employee being proceeded against in terms thereof would not arise."

This Court is of the considered view that the above proposition of law laid down by the Hon'ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case. Even in this case, as already pointed out, the first accused is admittedly the sole proprietrix of the concern namely, "Kamakshi Enterprises" and as such, the question of the second accused to be vicariously held liable for the offence said to have been committed by the first accused under Section 138 of the Negotiable Instruments Act not at all arise.

7. In view of the above said reasons, this Court is constrained to quash the proceedings initiated against the petitioner in so far as the petitioner is concerned pending in C.C.No.258 of 2001 on the file of the learned Judicial Magistrate No.1, Erode and is hereby quashed. The learned Judicial Magistrate No.1, Erode is also directed to expedite the trial as expeditiously as possible and more particularly within a period of five months from the date of receipt of a copy of this order in view of the fact that the case itself relates to the year 2001.

With the above direction, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

nvsri

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

The Judicial Magistrate, No.I, Erode

+ 1 cc to Mr. N. Manokaran, Advocate, SR No.64102

+ 1 cc to Mr. M. Ravi, Advocate, SR No.64101

VG(CO)
SR/15.11.2007

Crl.O.P.No.1582 of 2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/